



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

HARRISON CAREER INSTITUTE,

Respondent.

Docket No. 07-55-SA

Federal Student Aid
Proceeding

ACN: 03-2007-71802

Appearances: Fred Fitchett, of Cherry Hill, New Jersey, for Harrison Career Institute.

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

Harrison Career Institute (Harrison), the Respondent in this proceeding, participated in the various federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the Office of Federal Student Aid (FSA) of the United States Department of Education (Department). On October 19, 2007, FSA received Harrison's appeal of the Department's Final Audit Determination (FAD) dated September 7, 2007, in which FSA assessed a liability of \$5,113,973.28 for Harrison's alleged failure to submit a closeout audit report as required by 34 C.F.R. § 668.26(b)(2)(ii). The assessed liability encompasses all Title IV funds disbursed by the school between January 1, 2006, the date of its last submitted compliance audit, and January 22, 2007, the date its school locations were closed.

According to the September 7, 2007, FAD, Harrison closed its main locations in Delran, New Jersey, Wilmington, Delaware, and Philadelphia, Pennsylvania, on or before January 22, 2007. Following the school's closure, on February 6 and 7, 2007, the Department sent letters to Harrison reminding it of its obligation to comply with the closeout procedures for these locations.

Harrison asserts it does not have the resources to secure the closeout audit because of the financial burdens of the numerous adverse administrative actions that FSA has initiated against it during the past several years. It also presented several other reasons for its failure to submit a closeout audit. First, it states that in August 2005 the Department's Inspector General personnel seized all of the school records that its accounting firm needed for the completion of the closeout audit. Although Harrison admits that they have been given access to these files while they remain in the IG's custody, the fact that they are in a very disorganized state makes it difficult to find what they need. Without unfettered access to these student records, Harrison says it is unable to adequately identify how the Department allocated the federal student aid funds it disbursed.

Harrison next maintains that it does not have the finances to pay its accounting firm to conduct the audit because the closed schools no longer generate revenue. Harrison points out that it secured a letter of engagement with its auditor for the preparation of a closeout audit and the auditor has indicated a willingness to conduct it, but will not do so without being reimbursed for this and prior services it has rendered to Harrison. Harrison attached a letter from its auditor in which the auditor maintains that the Department is withholding funds due Harrison pursuant to a Heightened Cash Monitoring 2 (HCM2) submission from the school. The auditor says these funds would fully reimburse the firm for past and present services, and would allow for the preparation of the required audit. Accordingly, the auditor requests that the funds due Harrison be diverted to him to satisfy Harrison's outstanding debt and permit him to perform the audit.

Harrison concludes by requesting that this proceeding be held in abeyance until its pending appeal in another Departmental adverse action against it is resolved. It also submitted a request for copies of all records regarding the following topics: the amounts of funds the Department has refused to pay Harrison, all HCM2 payments since May 2005, all records "regarding the review and assignment or a report on the status of the various hearings and appeals in this matter before the Department", and "records of communications by and between" a number of specified FSA personnel, plus depositions of the same persons.

FSA characterizes Harrison's arguments for failing to submit the closeout audit as frivolous. FSA explains that the allegation that the Department is withholding money owed to the school as a result of a HCM2 submission is outside the jurisdiction of this tribunal because Harrison's reimbursement request is not relevant to this proceeding. Additionally, FSA explains that the other pending case before the tribunal involves a termination proceeding which in no way has any relevance to the current proceeding. Therefore, FSA contends there is no basis for delaying further action in this proceeding. FSA refutes Harrison's complaint regarding the inaccessibility of the seized records by pointing out that those records were seized in September 2005, whereas the audit in question pertains only to the period beginning on January 1, 2006. Accordingly, any records needed for the closeout audit should still be in Harrison's possession. Lastly, citing 34 C.F. R. § 668.117(b), FSA points out that because the tribunal does not have any authority to order the Department to comply with Harrison's request for FSA's records, the school's request for a stay be rejected.

The provisions of 34 C.F. R. § 668.26(b)(2)(ii) obligate a participating institution, within 45 days of its closure, to send to the Secretary of Education a letter of engagement for an independent audit of all Title IV funds that the institution received under this program from the date of its last compliance audit. The completed closeout audit must be submitted to the Secretary within 45 days of the date of the engagement letter. In the absence of this closeout audit, unless the school can otherwise account for the expenditure of all federal student aid funds since the date of the most recent compliance audit, the school is liable for all such funds received for that period. *See In the Matter of Stenotopia Business School*, Dkt. No. 01-26-SP, U.S. Dep't of Educ. (July 31, 2002).

Based on my review of the record, I find that Harrison has not satisfied its burden of persuading me that it has properly accounted for the Title IV funds it has received and disbursed between January 1, 2006 and its date of closure. 34 C.F. R. § 668.116(d). The regulations clearly set out the requirement for the submission of a closeout audit, and the tribunal has long held that if a school fails to submit a closeout audit as required, it may be held liable for all Title IV funds it received during the period for which funds are unaccounted. *See In the Matter of Southern College, and Southeastern Academy*, Dkt. Nos. 01-42-SA and 01-43-SA, U.S. Dep't of Educ. (April 29, 2002); *In the Matter of Magic Touch Beauty Institute*, Dkt. No. 97-161-SP, U.S. Dep't of Educ. (July 2, 1998), certified by the Secretary (Nov. 17, 1999); *In the Matter of Belzer Yeshiva*, Dkt. No. 99-55-SP, U.S. Dep't of Educ. (June 19, 1996). FSA is correct in asserting that the existence of other adverse proceedings initiated by the Department against Harrison, and their current status, are not relevant to the current action and do not foreclose its obligation to submit the closeout audit. Similarly, this tribunal is without jurisdiction to make any determination of whether the Department owes a participating school any unpaid Title IV funds. *See In the Matter of Modern Trend Beauty School*, Dkt. No. 98-109-SP, U.S. Dep't of Educ. (Mar. 14, 2001). Therefore, the tribunal cannot provide Harrison with any relief on those grounds. In addition, the tribunal has been specifically denied the authority to order discovery. 34 C.F. R. § 668.117(b). Lastly, Harrison cannot rely upon the IG possession of its records to justify its failure to submit the closeout audit because, as FSA points out, the records seized were for a prior period of time. Therefore, Harrison should have in its possession all it needs to complete a closeout audit.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Harrison Career Institute must pay \$5,113,973.28 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: May 15, 2008

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

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